

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5626

PETITION OF STEVE KNIGHT AND KAREN BURDITT

(Hearing held September 5, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, September 27, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Section 59-C-1.323(b)(1). The existing dwelling requires a one (1) foot variance as it is within four (4) feet of the side lot line and the proposed enclosure of the existing covered porch requires a 3.67 foot variance as it is within 1.33 feet of the side lot line. The required side lot line setback for both structures is five (5) feet.

The subject property is Lot 14, Block G, Blair Subdivision, located at 808 Violet Place, Silver Spring, Maryland, in the R-60 Zone (Tax Account No. 00993140).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to enclose an existing covered porch. The petitioners testified that the residence and the covered porch are non-conforming structures that are located in the northern side yard setback.
2. The petitioners testified that the porch is unusable because of its unusually small dimensions, which are 8 x 2.8 feet. The petitioner testified that the enclosure of the porch would expand the kitchen area and reduce the existing footprint.
3. The petitioners testified that the enclosure of the porch would eliminate the existing entrance that is adjacent to a neighboring home and lessen the activity in this area of their property.

FINDINGS OF THE BOARD

Based on the petitioner's binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in*

peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.

The covered porch and the residence are non-conforming structures located in the northern side yard setback. The Board finds that this is an exceptional condition that is unique and peculiar to the property and that the strict application of the regulations would result in practical difficulties for the property owners. The Board further finds that the enclosure of the porch would reduce the existing footprint.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the variances requested for the existing residence and the covered porch are the minimum reasonably necessary to overcome the peculiar and unique circumstances of the property.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The enclosure of the porch would continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed construction would eliminate an existing entrance that is adjacent to a neighboring home and would lessen the activity in this area of the petitioners' property. The record contains no correspondence or testimony in opposition to the variance request and the Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of one (1) foot from the required five (5) foot side lot line setback for the existing residence and of 3.67 feet from the required five (5) foot side lot line setback for the enclosure of the existing covered porch are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.
2. Construction must be completed according to plans entered in the record as Exhibit Nos. 4 and 5(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Donna L. Barron, seconded by Angelo M. Caputo, with Louise L. Mayer, Mindy Pittell Hurwitz and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 27th day of September, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.